

**GOVERNOR'S COMMISSION  
ON  
MINORITY AND WOMEN'S BUSINESS ENTERPRISES**

**MINUTES  
MARCH 14, 2005**

The Governor's Commission on Minority and Women's Business Enterprises met on March 14, 2005 in the Indiana Government Center South, Conference Center Room C, Indianapolis, IN.

Commission members present:

Tony Kirkland, Executive Assistant to Governor Mitchell Daniels, Jr.  
Earl A. Goode, Commissioner, Indiana Department of Administration  
Martha Kenley, INDOT, Director of Economic Opportunity  
Cleo Washington, SBC, Executive Director of External Affairs  
Gary Gibson, Gibson & Associates, LLC  
Rae Pearson, Alpha Rae Personnel  
Gregory Porter, Indiana State Representative  
Sylvia Trotter, Trotter Construction Company  
William Harmon, Harmon Construction

Commission members absent:

Charles Garcia, G. M. Construction Company  
Nell Hill, Caesars Indiana  
Priya Wharton, Tri-Star Engineering  
Billie Breaux, Indiana State Senator  
Ron Alting, Indiana State Senator  
Pat Miller, Secretary of Commerce  
Raymond Wellons

**CALL TO ORDER**

The meeting was called to order by Chairman, Tony Kirkland. The Chairman extended a warm welcome to them and to others in attendance.

**INTRODUCTIONS**

Chairman Kirkland introduced himself as the new Chairman of the Commission and asked all members to introduce themselves and describe their length of involvement with the Commission.

## MINUTES

The Minutes from the December 13, 2004 Commission meeting were e-mailed to Commissioners prior to the meeting. **It was moved by Gregory Porter and seconded by Rae Pearson that the previous minutes be approved. Motion carried.**

## COMMISSIONER'S REPORT

Commissioner Earl Goode deferred to Deputy Commissioner Claudia Cummings for reporting to the Commission.

## DEPUTY COMMISSIONER'S REPORT

### Disparity Study

Deputy Commissioner Cummings reported that responses (5) to the RFP were being reviewed; the required MOU's have been received and the Evaluation Committee is in its formation stage. She reported that the M/WBE staff has participated in several economic development events throughout the state; the M/WBE website is being updated to include Frequently Asked Questions (FAQs) and continues to be upgraded.

She also acknowledged the WISH-TV news coverage of INDOT which included comments about the M/WBE Division's certification process. She stated that INDOT was vigorously working on an appeal process to address so the issues presented.

Questions were raised about the Disparity Study. Rep. Gregory Porter asked what was the time frame for getting back to the respondents. Ms. Cummings said that the time frame would not be met and the respondents have not been contacted. Mr. Washington reminded the Commission that by statute, the Disparity Study is to be updated every five (5) years.

Commissioner Goode stated that he only recently became of the 5 year requirement, but there is a funding issue. He said that he projected getting back with the Commission on this issue before June 2005 (next Commission meeting).

Commissioner Washington said that if there is no funding for an updated Disparity Study, then we are forced to operate on current goals as established by the Mason Tillman Disparity Study conducted in 1999. He stated that it is the responsibility of the M/WBE Commission to set annual goals.

Commissioner Gibson asked for clarification on the funding issue: some funding or no funding? Commissioner Goode responded that there is \$0 funding. A follow-up question from Mr. Gibson asked if the staff is reviewing companies to see if their certification should be revoked. The response from Deputy Commissioner Cummings was in the affirmative. Commissioner Pearson asked if companies are found to be not legitimate...is there legislation about recovering monies from them?

Commissioner Goode said that companies that had not received an on-site visit prior to certification will be receiving one.

Commissioner Gibson stated that there is no remedy for recouping monies from companies misrepresenting themselves.

Regarding Executive Order 5-11, several questions were raised and comments made:

Tony Kirkland reported that he and Deputy Commissioner Cummings had met with IRMSDC, comparing their elements and processes and agreed that IRMSDC had the capacity to perform state certifications in addition to their private certification activity.

Commissioner Washington passed out copies of E.O. 5-11 and asked about the 180-day rule making provision. Ms. Cummings responded that the process for rule making has been started. She further commented that the M/WBE staff has reviewed both applications and the expectation is that it will be a seamless transition.

Commissioner Gibson asked if there are different standards. The response was that IRMSDC does not certify WBE or DBE's.

Commissioner Porter asked what was the downside...will IRMSDC process applications quicker? Commissioner Gibson asked if IRMSDC's MBE certifications would be accepted by the state. Ms. Cummings answered in the affirmative, providing the requirements of 25 IAC are applied.

Commissioner Goode clarified the intent, that of reciprocity versus outsourcing. Commissioner Gibson also expressed concern about the provision in E.O. 5-11 regarding private WBE certifications.

Commissioner Gibson informed the Commission that when he was Deputy Commissioner of M/WBE Division in 1991-92, he tried to establish certification reciprocity with IRMSDC and the City of Indianapolis, without success. He expressed concern as to how this administration would make it work. Deputy Commissioner Cummings responded that this administration will adhere to the Buy Indiana policy to increase Indiana and minority owned businesses.

Commissioner Washington reiterated that according to state statute IC 4-13-16.52(f)(7), the M/WBE Commission is required to set minority participation goals for the year based on a Utilization study. He pointed out that goals were not set by the Commission last year, allowing the administration the flexibility to set the goals based on their good faith efforts. Mr. Washington requested discussion on this matter...setting goals now as required by statute. Commissioner Washington passed out copies of an article published in the Indianapolis Star, September 2004. The article basically stated that state agencies were not responsive to minority goals. He stated that he did not agree with it then, but he does now. He emphasized that the system in place is not working and that without a policy in place, compliance is not possible.

Commissioner Goode said that the Governor has made concerted efforts to set goals...achievable targets with progression. He said that it is not possible to improve from the less than one (1) percent now to the recommended 34% per Mason Tillman.

Commissioner Porter requested that State Representative William Crawford be allowed to speak to the Commission. **It was so moved by Cleo Washington and seconded by Sylvia Trotter. Motion passed.**

Representative Crawford's informational points:

- State statutes survive any governor's term of office.
- Goals cannot be set without a Disparity Study as its basis.
- Disparity Study is to be conducted every 5 years or it can be legally challenged.
- Funding for the Disparity Study was assumed to exist.
- Arbitrary goals cannot be set.

In response to an earlier question, Mr. Crawford said that if a company knowingly and intentionally misrepresents itself, it is a Class D felony and the names of violators should be submitted to the Attorney General's office. Fraudulent companies can be debarred and prohibited from doing business.

Commissioner Goode assured the Commission that if such behavior is discovered, company names will be forwarded to legal authorities. He also asked for a little more time to get updated on the contents of the last Disparity Study. When asked how much time was needed, the response was one (1) month.

Commissioner Gibson restated his position...that it is more prudent to revert to the Mason Tillman Disparity Study since there is no other statistical analysis on which to set goals.

Commissioner Pearson agreed by saying that we already have a study and that we cannot keep going on without setting goals.

Commissioner Washington suggested that Susan Gard, General Counsel, issue a memo on *Croson*, the Mason Tillman Disparity Study, etc. to bring Chairman Kirkland, Commissioner Goode and Deputy Commissioner Claudia Cummings to bring them up to speed since they are new to state government. Commissioner Martha Kenley also requested background information before being asked to make a decision.

**It was moved by Cleo Washington and seconded by William Harmon that a Special Hearing on the Disparity Study be held on Monday, May 2, 2005 at 1:00 p.m. Motion passed.** Commissioner Pearson notified members that she would not be present for the meeting.

## ADJOURNMENT

Commissioner Gibson moved and Commissioner Pearson seconded that the meeting be adjourned. Meeting adjourned at 2:40 p.m.

Respectfully submitted,

Olga M. Jefferson-Kerr  
Information Director  
M/WBE Division